

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14337, of Soo Il Jun, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from grocery and deli, no seating, hot dogs and coffee only, first floor, to grocery and deli, no seating, hot dogs and coffee and single-serving ice cream and fountain soda drinks, first floor, in an R-4 District at premises 231 R Street, N.W., (Square 550, Lot 36).

HEARING DATE: September 25, 1985

DECISION DATE: September 25, 1985 (Bench Decision)

FINDINGS OF FACT:

1. The subject site is located at the northeast corner of the intersection of 3rd and R Streets, and is known as premises 231 R Street, N.W. It is in an R-4 District.

2. To the immediate north, east, south and west are residential structures all in the R-4 District. Further north along Florida Avenue is a C-2-A District.

3. The subject site measures approximately 74 feet in depth and 27 feet in width. The site is improved with a two-story structure having a grocery store/deli on the first floor and residential units on the second floor.

4. The area in front of the structure is planted with grass. There is a three foot high chain link fence enclosing the property which runs along the edge of the sidewalk.

5. The current Certificate of Occupancy No. B142246, dated June 3, 1985, is for the use of the first floor as a grocery and deli, no seating, hot dogs and coffee only.

6. By BZA Order No. 14232, dated April 23, 1985. The Board granted the applicant a special exception to operate a grocery/deli on the premises subject to the condition that the deli functions be limited to the service of hot dogs and coffee.

7. Pursuant to Sub-section 8207.2 of the Zoning Regulations, the applicant is seeking a special exception under Paragraph 7106.11 to change a nonconforming use to include single-serving ice cream and fountain soda drinks as well as the functions described in the finding No. 5 above.

8. Sub-section 8207.2 of the Zoning Regulations states in pertinent part that the Board is authorized to grant special exceptions where such special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and maps.

9. Paragraph 7106.11 states in pertinent part that a nonconforming use may be changed to a use which is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, provided:

- a. The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at least 300 feet in all directions from the nonconforming use.
- b. The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.
- c. In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility.

10. The requested special exception will not result in an increase in the number of staff or the hours of operation of the business.

11. The following findings of facts, (Nos. 12 through 15) from the previous Order No. 14232, are still valid for the subject application.

12. The grocery store is a family operated business. It also has one part-time employee from the neighborhood who resides over the store. The hours of operation are from 10:00 A.M. to 11:30 P.M.

13. There are no tables or chairs in the store. There are no benches outside the store.

14. Both the grocery store use and the delicatessen use are first permitted in a C-1 District.

15. Customers of the subject business come from the immediate neighborhood and generally walk to the store.

16. The grocery/deli will continue to operate seven days a week.

17. The additional deli services will require a soft ice cream machine measuring approximately two and a half feet wide by four feet high and a soda fountain machine of approximately the same size.

18. Milk for the ice cream machine will be delivered once a week around 11:00 A.M.. The delivery will be completed in less than five minutes.

19. The applicant now picks-up the trash from the subject site twice a day since receiving a complaint about the accumulation of litter at the site.

20. Three trash cans for use by customers will be provided at the subject site. One will be located indoors by the coffee counter. The second will be placed near the store entrance and the third will be located adjacent to the fence by the public sidewalk.

21. The two trash cans to be placed outside will be of sufficient size to accommodate the trash generated daily.

22. The Office of Planning by memoranda dated September 17, 1985, recommended approval of the application subject to the condition that the delicatessen use be limited to the preparation and sale of hot dogs, coffee, fountain soda drinks, and single-serving ice cream. The Office of Planning reported that the facts adduced at the January 23, 1985 hearing for BZA Application No. 14232 remain valid as do the conclusions of law reached by the Board. The addition of sodas and ice cream to the delicatessen menu does not alter the neighborhood orientation of the subject grocery/delicatessen nor does it impose adverse impacts upon surrounding residential properties. Thus, the proposed use continues to constitute a neighborhood facility which will not adversely affect the present character or future development of the area.

23. At the public hearing, the Office of Planning further recommended that the applicant provide outside garbage cans, one by the door exit and one by the fence, and that the applicant keep the yard free of trash.

24. Advisory Neighborhood Commission 5C filed no recommendation on the application.

25. A petition received September 10, 1985, contained 87 signatures of persons in favor of "a deli license" for the subject business. Most signers lived along R or 3rd Streets, N.W.

26. Four letters from neighbors of the subject site were submitted to the record in opposition to the application. The major concern of the neighbors was the trash that accumulated on the subject premises. Photos were submitted to the record showing much litter scattered throughout the fenced in area of the yard. The letters stated that the trash was present in large amounts on a daily basis and that people purchasing products at the grocery/deli often deposit their litter in the neighbors' yards. The neighbors are concerned that the increase in deli services will result in an increase of improperly disposed of trash. The opposition reported that the applicant has recently been maintaining the site and they wondered if this is only for the sake of the public hearing and will not be continued in the future.

27. One of the neighbors stated that the community doesn't need the proposed services. Another neighbor complained that numerous food products purchased at the grocery/deli were spoiled or insect infested. Another neighbor complained that the business generates additional traffic in the area including large trucks blocking the street.

28. The Board concurs that the applicant is responsible for the maintenance and clean-up of the site and will so condition the grant of this application. The Board further finds that the additional deli services are part of a neighborhood facility. The applicant is not required to demonstrate that the services are necessary to the community. The Board can not regulate the quality of food sold at the store. The Board finds that the additional delivery which occurs only once per week and is accomplished within five minutes, will not significantly adversely affect neighboring properties.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 7106.11 and that the relief requested under Subsection 8207.2 can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property.

The Board concludes that the applicant has met the burden of proof. The proposed use is designed to provide convenient retail services for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development. The proposed use is permitted as a matter-of-right in the most restrictive district which the previous use is permitted as a matter-of-right. The Board concludes that the proposed use constitutes a neighborhood

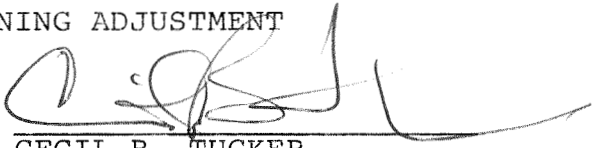
facility which will not adversely affect the present character or future development of the area. Accordingly, the application is GRANTED SUBJECT to the following CONDITIONS:

1. Three trash cans shall be provided on the subject site. One shall be located inside the grocery delicatessen at the coffee counter, another by the entrance to the structure and the third at the edge of the grassy area adjacent to the sidewalk. The latter two trash cans shall be of a larger size than the first.
2. Trash and other debris will be picked-up from the lot as often as necessary to keep the site clean.

VOTE: 3-0 (Patricia N. Mathews, William F. McIntosh, Charles R. Norris to grant; Carrie L. Thornhill and Douglas J. Patton not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 24 JAN 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14337order/LJPK